

# Tenant Rights in CICs

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# Disclaimer

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- Should confusion arise requiring the interpretation and application of the law to your association's specific circumstances, a legal opinion from a qualified attorney may be necessary.
- Please review the course calendar, training request form, and presentations published on the training webpage to gain an understanding of additional opportunities for education and training. See our training webpage at [http://red.nv.gov/Content/CIC/Program\\_Training/](http://red.nv.gov/Content/CIC/Program_Training/).

# UNIQUE

- Numerous federal, state, county, and city laws address the rights of tenants and unit owners.
- This presentation only focuses on those provisions specific to CICs as outlined in NRS & NAC 116.



# Disclaimer

# Agenda

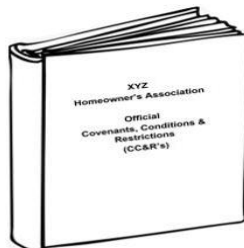


- The Declaration
- Tenant vs Unit Owner
- CIC Rules
- Rules Violations
- Miscellaneous

# The Declaration

NRS 116.335

- Unless, at the time a unit owner purchased their unit, the declaration:
  - prohibited the unit owner from renting/leasing the unit,
    - the association may not prohibit renting/leasing of the unit.
  - required the unit's owner to secure/obtain any approval from the association in order to rent/lease their unit,
    - an association may not require such approval.
- If a declaration contains a provision establishing a maximum number or percentage of units in the CIC which may be rented/leased, that provision may NOT be amended to decrease the maximum.



# The Declaration continued

NRS 116.335

- If the governing documents require a unit's owner, or the tenant, to register with, or submit to the association information concerning the rental/lease agreement, the association:
  - May not require information which the association does not require to be provided by a unit owner who occupies their unit, other than the rental/lease agreement; and
  - May not charge a fee to the owner for the registration or submission.
- NRS 116 does not prohibit an association from enforcing any provisions which govern the renting or leasing of units contained in any other applicable federal, state or local laws or regulations.



# The Declaration: Rental Cap Waiver

NRS 116.335(6)

- Notwithstanding any other provision of law or the declaration to the contrary:
  - If a unit's owner cannot rent their unit because the maximum number or percentage of units (specified in the declaration) have already been rented or leased, the unit's owner may seek a waiver from the board based upon a showing of economic hardship, and the board may grant such a waiver and approve the renting or leasing of the unit.
  - If the declaration contains a provision establishing a maximum number or percentage of units in the CIC which may be rented or leased, in determining the maximum number, the units owned by the declarant must not be counted or considered.



# Tenant vs Unit Owner: Assessments

NRS 116.3115

- Unit owners are responsible to the association for assessments.
- Tenants **MIGHT** be responsible to the Unit Owner for assessments **IF** the rental agreement so stipulates.
- If damage to a part of the community or any other common expense is caused by the willful misconduct or gross negligence of a tenant, the association may assess that expense exclusively against the unit, even if the association maintains insurance with respect to that damage.
  - The cost may then be passed to the tenant pursuant to the rental agreement.





# Tenant vs Unit Owner: Voting Rights

NRS 116.311

- A unit owner MAY give a proxy to a tenant who resides in the unit.
- Pursuant to the governing documents, votes allocated to a unit (including those needed for a quorum) may be cast pursuant to a proxy, executed by a unit's owner.
  - EXCEPT for election or removal of a board member(s).
- The tenant must attend a meeting of the association and disclose at the beginning of the meeting the number of proxies to which they will be casting votes.
  - The tenant cannot cast a vote that is contrary to the proxy.



# Tenant vs Unit Owner: Voting Rights continued

NRS 116.311

PROXY DECLARATION

- The proxy MUST:
  - Be dated,
  - Designate the meeting for which it is to be executed,
  - Designate each specific item on the agenda for which it will be executed, and
  - Designated the vote on behalf of the unit's owner.
- A proxy terminates immediately after the conclusion of the meeting.

I, \_\_\_\_\_, a member of ABC HOA in good standing, do hereby authorized \_\_\_\_\_ to act as my proxy and vote as he/she sees fit, subject to the following

stipulation:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

at the annual unit owners meeting of ABC HOA being held on Saturday, October 24<sup>th</sup>, 2020 at 1 pm at the Grant Meeting Hall, 1010 S Birtch Blvd, Reno, NV.

Signed: \_\_\_\_\_ Witness: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

The completed proxy must be presented to the meeting presider PRIOR TO THE MEETING BEGINNING.

# Tenant vs Unit Owner: Displaying U.S. Flag

NRS 116.320

- Neither the board, nor the governing documents, may prohibit a unit owner from displaying the flag of the United States or of the State of Nevada.
- Authorized flag **MUST** be:
  - Made of cloth, fabric or paper;
  - Displayed from a pole or staff or in a window;
  - For US flag, displayed in a manner that is consistent with 4 U.S.C. Chapter 1, and
  - The state flag may not be larger than the US flag displayed.
- This right **does not apply** to flags made of balloons, flora, lights, paint, paving, roofing, siding or any other similar building, decorative or landscaping component.



# Tenant vs Unit Owner: Displaying Political Signs

NRS 116.325

- Defined as a sign which expresses support for or opposition to a candidate, political party or ballot question in any federal, state, local or association election.
- Neither the board, nor the governing documents, may prohibit a unit owner or occupant from exhibiting one or more political signs, subject to the following conditions:
  - All political signs may not be larger than 24x36 inches.
  - If the unit is occupied by a tenant, the unit owner may not exhibit any political sign unless the tenant consents, in writing.
  - All political signs are subject to any applicable provisions of law.
  - A unit owner or occupant may exhibit as many signs as desired but not more than one sign per candidate, party or ballot question.



# Knowledge Check



1. True/False: Amendments to the declaration restricting the rental of units are enforceable upon unit owners 30 days after the amendment is filed in every county in which the CIC resides.
2. May the association charge a fee to the owner for the registration or submission of a rental/lease agreement?
3. Who is responsible for paying assessments, tenant or unit owner?
4. May a unit owner give a tenant a proxy to vote in association board member elections?
5. True/False: If a unit is occupied by a tenant, the unit owner may not exhibit any political sign unless the tenant consents, in writing.

# CIC Rules: Parking

NRS 116.350

- The governing documents of an association CAN set forth rules that reasonably restrict the parking or storage of recreational vehicles, watercraft, trailers or commercial vehicles in the community.
- The governing documents of an association must not prohibit a person (unit owner or tenant) from parking a utility service, law enforcement, or emergency vehicle if the person is bringing the vehicle home pursuant to their employment and for the purpose of responding to emergency requests for service.
  - An association may require that the person provide written confirmation from the owner/tenant employer.



# CIC Rules: Towing

NRS 116.102(1)(s)

- The association MAY direct the removal of vehicles improperly parked on any road, street, alley or other thoroughfare in violation of the governing documents.
- In addition to complying with the requirements of NRS 487.038 and NRS 706.4477, if a vehicle is improperly parked, the association must:
  - Post written notice in a conspicuous place on the vehicle, or
  - Provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal,
    - Unless the vehicle:
      - Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or
      - Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the residents of the community.



# CIC Rules: Storage of Solid Waste Containers

NRS 116.332

- An association MAY NOT regulate or restrict the manner in which containers for the collection of solid waste or recyclable materials are stored on the premises of a residential unit with curbside service.
- An association MAY adopt rules that reasonably restrict the manner in which such containers are stored on the premises when not within the collection area. These rules MUST:
  - Comply with all applicable codes and regulations; and
  - Allow the unit's owner, or a tenant, to store containers outside any building or garage.
- An association MAY designate a collection area and regulate how, when, where, and for how long containers may be placed in that area.





# Rules Violations

NRS 116.31031

- The association is obligated to mail or email the fine schedule to the designated address of each unit owner annually.
- If a tenant violates any provision of the governing documents of an association, the board may, if the governing documents so provide, sanction them in the same manner as a unit owner.
  - The association may not prohibit ingress or egress to or from the unit, including any area used for parking.



# Rules Violations: Notice

NRS 116.31031(4)

- The board **MAY NOT** impose a fine unless, at least 30 days before the alleged violation, the violator was provided with written notice of the applicable provisions of the governing documents that form the basis of the alleged violation.
- The association **MUST** send notice of an alleged violation to the address of the unit **and**, if different, to a mailing address specified by the unit's owner before a fine may be imposed.
- The board **MUST** hold a hearing (executive session) before a fine may be imposed.
  - The board **MUST** schedule a date, time and location for a hearing on the alleged violation so that the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for and be present at the hearing. Must be at least 10 days before the meeting per NRS 116.31083.



# Rules Violations: Imposing Fines/Sanction

NRS 116.31031(1)

- To impose sanctions:
  - The governing documents **MUST** provide the association the authority to:
    - impose a fine,
    - prohibit a unit owner from using the common elements, and/or
    - restrict voting rights within the CIC.
  - The association **MUST** comply with all provisions of NRS 116.31031 and the pending updates to NAC 116.



# Rules Violations: Receiving Services

NRS 116.2111

- An association may not charge a fee or impose a fine for a person entering the community to provide services to:
  - A unit;
  - A unit's owner;
  - A tenant; or
  - Any visitor or guest.
- The executive board may not impose a fine for a violation committed by an invitee unless the unit owner or tenant:
  - Participated in or authorized the violation;
  - Had prior notice of the violation;
  - Had an opportunity to stop the violation and failed to do so; or
  - The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the unit's owners or residents.

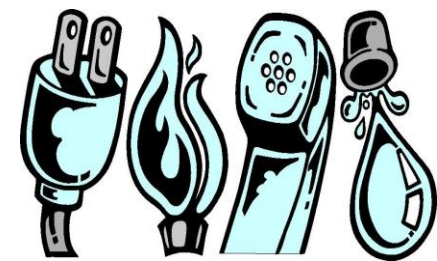
SB72 & NRS 116.31031(2)



# Rules Violations: Interruption of Utilities

NRS 116.345(4)

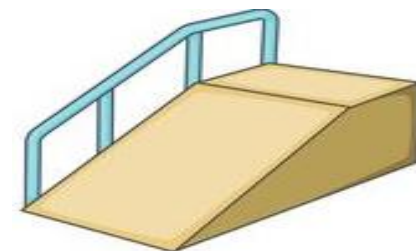
- An association may not interrupt any utility service except for nonpayment of utility charges, when due.
- An association shall in every case send a written notice of its intent to interrupt any utility service to the tenant at least 10 days prior.



# Miscellaneous: Alterations to Unit Due to Disability

NRS 116.2111(2)(c)(1)

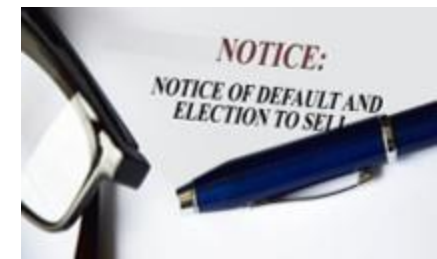
- An association may not unreasonably restrict, prohibit or withhold approval for a unit's owner to add to a unit improvements such as ramps, railings or elevators that are necessary to improve access to the unit for any occupant of the unit who has a disability.



# Miscellaneous: Sale of Unit due to Foreclosure

NRS 116.311635

- If a unit is to be sold due to foreclosure as described in NRS 116, in addition to the notification requirements for a unit's owner
  - A copy of the notice of sale **MUST** be served to an occupant (tenant) of the unit who is of suitable age; or
  - By posting a copy of the notice of sale in a conspicuous place on the unit.



# Miscellaneous: Complaints

NRS 116.760 & 116.750

- Any person who is aggrieved by an alleged violation of NRS 116 or by the interpretation of the association's governing documents may file a complaint with the Office of the Ombudsman.
  - If the tenant wishes to file a Statement of Fact against a CAM or RSS, they must first obtain written approval from the unit's owner.
- Action can be taken by the CICCH Commission against any person who commits a violation of NRS 116, including the tenant, if the tenant has entered into an agreement with the unit owner to abide by the governing documents of the association and NRS 116.





# Miscellaneous: Landlord-Tenant Disputes

- If a dispute has nothing to do with NRS 116 or the association's governing documents, and
- A tenant fails to comply with the rental agreement or their obligations (NRS 118A.420); or
- A landlord fails to disclose necessary information or comply with their obligations (NRS 118A.410)...
- The complaint must be filed with the court.
- Upon application of either party, the court, after notice and opportunity for a hearing, shall settle all disputes (NRS 118A.490)



# Knowledge Check



1. True/False: The governing documents can set forth rules that reasonably restrict the parking or storage of recreational vehicles in the community.
2. May an association designate a collection area and regulate how, when, where, and for how long trash containers may be placed in that area?
3. May an association sanction a tenant for a rule violation?
4. True/False: A tenant is subject to the same rights and procedures as a unit owner prior to being fined for a violation.
5. Does a tenant require approval from a unit owner before filing a complaint against a board member?
6. Are tenants in a CIC subject to NRS 116?

# Conclusion!



- The Declaration
- Tenant vs Unit Owner
- CIC Rules
- Rules Violations
- Miscellaneous

# Questions?

- <http://red.nv.gov/> - Main Page
- [CICOmbudsman@red.nv.gov](mailto:CICOmbudsman@red.nv.gov) – Email Questions
- [http://red.nv.gov/Content/CIC/Program\\_Training/](http://red.nv.gov/Content/CIC/Program_Training/)